

### Remarks

Favorable reconsideration of this application is requested in view of the following remarks. For the reasons set forth below, Applicant traverses the rejections and respectfully submits that the claimed invention is also allowable over the newly-cited references.

The Office Action dated December 8, 2005, indicated that claims 1-27 are rejected under 35 U.S.C. § 103(a) over Muller *et al.* (U.S. Patent No. 6,606,301) in view of Bellaton *et al.* (U.S. Patent No. 6,473,425).

Applicant respectfully traverses because: the rejections rely on a misinterpretation of at least the Bellaton '425 reference and, as such, these references as combined do not correspond; and there is no motivation or suggestion in the prior art to combine these references as asserted.

The record is clear that neither reference teaches or suggest the claimed invention when considered in piecemeal parts or, as required by §103(a), when considered "as a whole." The Office Action acknowledges in pertinent part that: "Muller fails to disclose detecting a matching flow identification between a recently-received incoming packet with at least one packet selected from a set of outgoing packets in order to determine which packet to be dropped." See Office Action at page 3. To buttress the rejection, the Office Action cites portions of the Bellaton '425 reference as relating to its processor 28 of Figure 2 and the flow chart of Figure 11. However, no portion of this cited discussion of the Bellaton '425 reference relates to these aspects which the Office Action acknowledges as not being disclosed by the Muller '301 reference. In fact, for the passages cited with the Bellaton '425 reference, none of the packets discussed in connection with Figure 11 of the Bellaton '425 reference discusses any correlation between recently-received incoming packets and the outgoing packets to be transmitted and/or retransmitted per the aforementioned Figure 11. As neither of the asserted references teaches this claimed subject matter, then it would be untenable to maintain a rejection on the premise that a combination of teachings from the asserted references could correspond to the claimed subject matter. Accordingly, Applicant submits that the rejection is improper and should be withdrawn.

Applicant further submits that there is no motivation or suggestion in the prior art to combine these references. According to the Office Action, “The motivation would have been to provide a fair share of the bandwidth between the flows.” However, “the flows” to which the Office Action refers have no antecedent basis in connection with the asserted aspects of these references. As discussed above, the Office Action is based on a misinterpretation of at least the Bellaton ‘425 reference – which does not discuss any correlation between recently-received incoming packets and the outgoing packets to be transmitted and/or retransmitted per Figure 11 of the Bellaton ‘425 reference. Therefore, such fair share of the bandwidth between “the flows” is not apparent from either reference, and one skilled in the art would not be led by the prior art (or “motivated” under §103(a)) to implement the asserted combination.

Moreover, under §103(a), the rejection is improper because the asserted combination would undermine the operation and/or purpose of the main reference (“the Muller ‘301 reference”). See MPEP § 2143.01, *In re Gordon*, 733 F.2d 900, 221 U.S.P.Q. 1125 (Fed. Cir. 1984). The operation and purpose of the Muller ‘301 reference is to provide “early random discard of packets” when the rate of packet transfers cannot keep up with the rate of packet arrivals at the queue. See Title, Abstract and Summary of the Muller ‘301 reference. According to the asserted modification of the Muller ‘301 reference, some aspect of incoming packets would be assessed in order to determine which packet to be dropped. Based on the Office Action’s one-sentence discussion of this hypothetical embodiment, assuming *arguendo* that such an embodiment would be operable, it would appear that this hypothetical embodiment would be dropping packets not randomly as intended by the Muller ‘301 reference but rather based on some undefined aspect of incoming packets. Applicant submits that this the Muller ‘301 reference teaches away from any such modification and that the rejection is improper and should be withdrawn under MPEP § 2143.01.

In view of the above discussion, Applicant believes that the rejection has been overcome and the application is in condition for allowance. A favorable response is requested. Should there be any remaining issues that could be readily addressed over the telephone, the Examiner is encouraged to contact the undersigned at (651) 686-6633.

Respectfully submitted,

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By: 

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